

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 NEW JERSEY AVENUE, N.W., SUITE 9500
WASHINGTON, D.C. 20001

July 13, 2007

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 2007-126
Petitioner : A.C. No. 36-05466-106793
v. :
EMERALD COAL RESOURCES, LP, : Emerald Mine No. 1
Respondent :

DECISION

Appearances: Ronald M. Miller, Conference & Litigation Representative, U.S. Department of Labor, Hunker, PA, on behalf of the Petitioner;
R. Henry Moore, Esq., Jackson Kelly, PLLC, Pittsburgh, PA, on behalf of the Respondent.

Before: Judge Melick

This case is before me upon a petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.*, the “Act,” charging Emerald Coal Resources, LP (Emerald) with one violation of the mandatory standard at 30 C.F.R. § 75.516-2(c) and proposing a civil penalty for the violation. The general issue before me is whether Emerald violated the cited standard and, if so, what is the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

The citation at bar, No. 7019806, charges as follows:

The communication wire for the telephone located at the B-4 long wall belt starter was not effectively protected with additional insulation where it came into contact with 480-volt energized power cables. The phone cable was intermingled with the power cables from the phone to the track.

The cited standard, as relevant hereto, provides that “[a]dditional insulation shall be provided for communication circuits at points where they pass over or under any power conductor.”

The undisputed evidence in this case establishes that additional insulation was in fact provided for the communication circuit at issue where it contacted the cited power conductor. The Secretary also acknowledges that there was no safety hazard presented under the facts herein.

Indeed, while the regulation at bar requires no measurable level of protection, it is undisputed that the insulated circuit herein far exceeded the required dielectric strength.¹

The Secretary argues in this case that the additional insulation required by her regulatory standard must be provided by the mine operator and cannot legally be provided by the manufacturer as in the instant case. She provides no legal or rational basis for this argument.² Indeed, the Secretary does not even claim that her interpretation of the standard requires deference under applicable law. In any event, deference to an agency's construction of its own regulation is due only when the plain meaning of the rule itself is doubtful or ambiguous. Here the meaning of the regulation is clear on its face. See e.g. *Udall v. Tallman*, 380 U.S. 1 (1965); *Pfizer v. Heckler*, 735 F2d 1502, 1509 (D.C. Cir 1984); *Exportal LTDA v. U.S.*, 902 F2d 45 (D.C. Cir. 1990).

Under the circumstances I find that there was no violation of the cited standard.

ORDER

Citation No. 7019806 is hereby vacated and this civil penalty proceeding dismissed.

Gary Melick
Administrative Law Judge
(202) 434-9977

Distribution: (Certified Mail)

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“Dielectric strength” is the voltage which an insulation can withstand before breakdown occurs (Respondent’s Exh. No. 6).

Western Fuels-Utah, Inc. v. Secretary, 17 FMSHRC 756(May 1995)(ALJ) cited by the Secretary is inapposite.